

Union Calendar No. 198

105TH CONGRESS
1ST Session

H. R. 2265

[Report No. 105-339]

A BILL

To amend the provisions of titles 17 and 18, United States Code, to provide greater copyright protection by amending criminal copyright infringement provisions, and for other purposes.

OCTOBER 23, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1997

Mr. GOODLATTE (for himself, Mr. COBLE, Mr. FRANK of Massachusetts, and Mr. CANNON) introduced the following bill; which was referred to the Committee on the Judiciary

OCTOBER 23, 1997

Additional sponsors: Mr. DELAHUNT, Mr. GALLEGLY, and Mr. CLEMENT

OCTOBER 23, 1997

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on July 25, 1997]

A BILL

To amend the provisions of titles 17 and 18, United States Code, to provide greater copyright protection by amending criminal copyright infringement provisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “No Electronic Theft*
5 *(NET) Act”.*

6 **SEC. 2. CRIMINAL INFRINGEMENT OF COPYRIGHTS.**

7 *(a) DEFINITION OF FINANCIAL GAIN.—Section 101 of*
8 *title 17, United States Code, is amended by inserting after*
9 *the undesignated paragraph relating to the term “display”,*
10 *the following new paragraph:*

11 *“The term ‘financial gain’ includes receipt, or*
12 *expectation of receipt, of anything of value, including*
13 *the receipt of other copyrighted works.”.*

14 *(b) CRIMINAL OFFENSES.—Section 506(a) of title 17,*
15 *United States Code, is amended to read as follows:*

16 *“(a) CRIMINAL INFRINGEMENT.—Any person who in-*
17 *fringes a copyright willfully either—*

18 *“(1) for purposes of commercial advantage or*
19 *private financial gain, or*

20 *“(2) by the reproduction or distribution, includ-*
21 *ing by electronic means, during any 180-day period,*
22 *of 1 or more copies or phonorecords of 1 or more*
23 *copyrighted works, which have a total retail value of*
24 *more than \$1,000,*

1 *shall be punished as provided under section 2319 of title*
 2 *18.”.*

3 *(c) LIMITATION ON CRIMINAL PROCEEDINGS.—Section*
 4 *507(a) of title 17, United States Code, is amended by strik-*
 5 *ing “three” and inserting “5”.*

6 *(d) CRIMINAL INFRINGEMENT OF A COPYRIGHT.—Sec-*
 7 *tion 2319 of title 18, United States Code, is amended—*

8 *(1) in subsection (a), by striking “subsection (b)”*
 9 *and inserting “subsections (b) and (c)”;*

10 *(2) in subsection (b)—*

11 *(A) in the matter preceding paragraph (1),*
 12 *by striking “subsection (a) of this section” and*
 13 *inserting “section 506(a)(1) of title 17”; and*

14 *(B) in paragraph (1)—*

15 *(i) by inserting “including by elec-*
 16 *tronic means,” after “if the offense consists*
 17 *of the reproduction or distribution,”; and*

18 *(ii) by striking “with a retail value of*
 19 *more than \$2,500” and inserting “which*
 20 *have a total retail value of more than*
 21 *\$2,500”; and*

22 *(3) by redesignating subsection (c) as subsection*
 23 *(e) and inserting after subsection (b) the following:*

24 *“(c) Any person who commits an offense under section*
 25 *506(a)(2) of title 17—*

1 “(1) shall be imprisoned not more than 3 years,
2 or fined in the amount set forth in this title, or both,
3 if the offense consists of the reproduction or distribu-
4 tion of 10 or more copies or phonorecords of 1 or
5 more copyrighted works, which have a total retail
6 value of \$2,500 or more;

7 “(2) shall be imprisoned not more than 6 years,
8 or fined in the amount set forth in this title, or both,
9 if the offense is a second or subsequent offense under
10 paragraph (1); and

11 “(3) shall be imprisoned not more than 1 year,
12 or fined in the amount set forth in this title, or both,
13 if the offense consists of the reproduction or distribu-
14 tion of 1 or more copies or phonorecords of 1 or more
15 copyrighted works, which have a total retail value of
16 more than \$1,000.

17 “(d)(1) During preparation of the presentence report
18 pursuant to Rule 32(c) of the Federal Rules of Criminal
19 Procedure, victims of the offense shall be permitted to sub-
20 mit, and the probation officer shall receive, a victim impact
21 statement that identifies the victim of the offense and the
22 extent and scope of the injury and loss suffered by the vic-
23 tim, including the estimated economic impact of the offense
24 on that victim.

1 “(2) *Persons permitted to submit victim impact state-*
2 *ments shall include—*

3 “(A) *producers and sellers of legitimate works af-*
4 *ected by conduct involved in the offense;*

5 “(B) *holders of intellectual property rights in*
6 *such works; and*

7 “(C) *the legal representatives of such producers,*
8 *sellers, and holders.”.*

9 (e) *UNAUTHORIZED FIXATION AND TRAFFICKING OF*
10 *LIVE MUSICAL PERFORMANCES.—Section 2319A of title 18,*
11 *United States Code, is amended—*

12 (1) *by redesignating subsections (d) and (e) as*
13 *subsections (e) and (f), respectively; and*

14 (2) *by inserting after subsection (c) the follow-*
15 *ing:*

16 “(d) *VICTIM IMPACT STATEMENT.—(1) During prepa-*
17 *ration of the presentence report pursuant to Rule 32(c) of*
18 *the Federal Rules of Criminal Procedure, victims of the of-*
19 *fense shall be permitted to submit, and the probation officer*
20 *shall receive, a victim impact statement that identifies the*
21 *victim of the offense and the extent and scope of the injury*
22 *and loss suffered by the victim, including the estimated eco-*
23 *nomiic impact of the offense on that victim.*

24 “(2) *Persons permitted to submit victim impact state-*
25 *ments shall include—*

1 “(A) producers and sellers of legitimate works af-
2 fected by conduct involved in the offense;

3 “(B) holders of intellectual property rights in
4 such works; and

5 “(C) the legal representatives of such producers,
6 sellers, and holders.”.

7 (f) *TRAFFICKING IN COUNTERFEIT GOODS OR SERV-*
8 *ICES.*—Section 2320 of title 18, United States Code, is
9 amended—

10 (1) by redesignating subsections (d) and (e) as
11 subsections (e) and (f), respectively; and

12 (2) by inserting after subsection (c) the follow-
13 ing:

14 “(d)(1) During preparation of the presentence report
15 pursuant to Rule 32(c) of the Federal Rules of Criminal
16 Procedure, victims of the offense shall be permitted to sub-
17 mit, and the probation officer shall receive, a victim impact
18 statement that identifies the victim of the offense and the
19 extent and scope of the injury and loss suffered by the vic-
20 tim, including the estimated economic impact of the offense
21 on that victim.

22 “(2) Persons permitted to submit victim impact state-
23 ments shall include—

24 “(A) producers and sellers of legitimate goods or
25 services affected by conduct involved in the offense;

1 “(B) holders of intellectual property rights in
2 such goods or services; and

3 “(C) the legal representatives of such producers,
4 sellers, and holders.”.

5 (g) *DIRECTIVE TO SENTENCING COMMISSION.*—(1)
6 Under the authority of the Sentencing Reform Act of 1984
7 (Public Law 98–473; 98 Stat. 1987) and section 21 of the
8 Sentencing Act of 1987 (Public Law 100–182; 101 Stat.
9 1271; 18 U.S.C. 994 note) (including the authority to
10 amend the sentencing guidelines and policy statements), the
11 United States Sentencing Commission shall ensure that the
12 applicable guideline range for a defendant convicted of a
13 crime against intellectual property (including offenses set
14 forth at section 506(a) of title 17, United States Code, and
15 sections 2319, 2319A, and 2320 of title 18, United States
16 Code) is sufficiently stringent to deter such a crime and
17 to adequately reflect the additional considerations set forth
18 in paragraph (2) of this subsection.

19 (2) In implementing paragraph (1), the Sentencing
20 Commission shall ensure that the guidelines provide for con-
21 sideration of the retail value and quantity of the items with
22 respect to which the crime against intellectual property was
23 committed.

1 **SEC. 3. INFRINGEMENT BY UNITED STATES.**

2 *Section 1498(b) of title 28, United States Code, is*
3 *amended by striking “remedy of the owner of such copyright*
4 *shall be by action” and inserting “action which may be*
5 *brought for such infringement shall be an action by the*
6 *copyright owner”.*

7 **SEC. 4. CLARIFICATION OF LIABILITY FOR COPYRIGHT IN-**
8 **FRINGEMENT.**

9 *Except as expressly provided in this Act, nothing in*
10 *this Act or the amendments made by this Act modifies li-*
11 *ability for copyright infringement, including the standard*
12 *of willfulness for criminal infringement.*